

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

IN RE:

Emanuele Torelli

Debtor(s)

Case No.: 08 B 30416

Chapter: 7

Hearing Date: 11/25/08

Judge Carol A. Doyle

NOTICE OF MOTION

TO: Karen R. Goodman, Esq., Interim Trustee, 111 E. Wacker Dr. Suite 2800, Chicago, IL 60601 by electronic notice through ECF
Emanuele Torelli, Debtor(s), 767 Schooner LN, Elk Grove Village, IL 60007-6910
Troy Gleason, Attorney for Debtor(s), 77 W Washington Ste 1218, Chicago, IL 60602 by electronic notice through ECF

PLEASE TAKE NOTICE that on the 11/25/08, at 10:00am, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Carol A. Doyle, Bankruptcy Judge, in the courtroom usually occupied by him/her at the Everett McKinley Dirksen Building, 219 South Dearborn, Chicago, Illinois, room 742, or before any other Bankruptcy Judge who may be sitting in his/her place and stead, and shall then and there present this Motion of the undersigned, a copy of which is attached hereto and herewith served upon you, and shall pray for the entry of an Order in compliance therewith, at which time you may appear if you so desire.

PROOF OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached Motion upon the parties listed above, as to the Trustee and Debtor's attorney via electronic notice on November 17, 2008 and as to the debtor by causing same to be mailed in a properly addressed envelope, postage prepaid, from 7140 Monroe Street, Willowbrook, IL 60527 before the hour of 5:00 PM on November 17, 2008.

/s/ Joel P. Fonferko
Attorney for Movant

Berton J. Maley ARDC#6209399
Gloria C. Tsotsos ARDC# 6274279
Jose G. Moreno ARDC#6229900
Rachael A. Stokas ARDC#6276349
Peter C. Bastianen ARDC#6244346
Joel P. Fonferko ARDC#6276490
Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
C&A FILE (14-08-07162)

NOTE: Pursuant to the Fair Debt Collection Practices Act you are advised that this law firm is deemed to be a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached Motion upon the parties listed below, as to the Trustee and Debtor's attorney via electronic notice on November 17, 2008 and as to the debtor by causing same to be mailed in a properly addressed envelope, postage prepaid, from 7140 Monroe Street, Willowbrook, IL 60527 before the hour of 5:00 PM on November 17, 2008.

Karen R. Goodman, Esq., Interim Trustee, 111 E. Wacker Dr. Suite 2800, Chicago, IL 60601 by electronic notice through ECF

Emanuele Torelli, Debtor(s), 767 Schooner LN, Elk Grove Village, IL 60007-6910

Troy Gleason, Attorney for Debtor(s), 77 W Washington Ste 1218, Chicago, IL 60602 by electronic notice through ECF

/s/ Joel P. Fonferko

Attorney for Movant

Berton J. Maley ARDC#6209399

Gloria C. Tsotsos ARDC# 6274279

Jose G. Moreno ARDC#6229900

Rachael A. Stokas ARDC#6276349

Peter C. Bastianen ARDC#6244346

Joel P. Fonferko ARDC#6276490

Codilis & Associates, P.C.

15W030 North Frontage Road, Suite 100

Burr Ridge, IL 60527

(630) 794-5300

C&A FILE (14-08-07162)

NOTE: Pursuant to the Fair Debt Collection Practices Act you are advised that this law firm is deemed to be a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

IN RE:

Emanuele Torelli

Debtor(s)

Case No.: 08 B 30416

Chapter: 7

Hearing Date: 11/25/08

Judge Carol A. Doyle

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

NOW COMES FIFTH THIRD MORTGAGE COMPANY (hereinafter "Movant"), by and through its attorneys, Codilis & Associates, P.C., and moves this Honorable Court pursuant to 11 U.S.C. §362(d) for an Order granting Movant relief from the automatic stay, and in support thereof states as follows:

1. This Court has jurisdiction pursuant to 28 U.S.C. §1334 and General Rule 2.33 of the United States District Court for the Northern District of Illinois;
2. The Debtor is indebted to Movant for which the Movant claims a valid security interest in the property commonly known as 767 Schooner Lane, Elk Grove Village, IL;
3. This security interest arose from a Note and Mortgage, executed on 6/14/2007, in the amount of \$328,000.00;
4. Enforcement of this security interest has been stayed automatically by operation of 11 U.S.C. §362 of the Bankruptcy Code upon Debtor filing of this petition on 11/7/08;
5. Movant is entitled to relief from the automatic stay under 11 U.S.C. §362(d) for the following reasons:

a) The Debtor is in default in the performance of the terms and conditions of said Note and Mortgage and are contractually due for the 11/1/07, payment with a total default as of 11/1/08, in excess of \$33,059.52, including post-petition attorney fees and costs;

b) The Estimated Payoff amount is \$374,383.88. The Estimated fair market value of the property is \$335,501.00, Price Opinion based on comparables. That to the best of Movant's knowledge, no non-exempt equity exists in the subject property or any equity that does exist is so insubstantial as to be of little or no benefit or burdensome to the estate;

c) The above is especially true when considering the cost of selling the property, as outlined below:

Fair Market Value: \$335,501.00

Less Lien Payoff and Cost of Sale:

Estimated Payoff: \$374,383.88

Payoff of Other Liens: \$41,000.00 (per Foreclosure title work)

Broker's Commission (6% of FMV): \$20,130.06

Other Closing Costs (estimated): \$2,000.00

Tax Pro-ration:

Net Proceeds of Sale: (\$102,012.94)

(assuming no capital gains need to be paid)

6. Movant has incurred attorney fees and/or costs in connection with this bankruptcy proceeding which have been included in the calculation of any default figures quoted herein subject to court approval, including:

\$500.00 for Preparation of Notice and Motion for Relief
from the Automatic Stay, One Court Appearance

\$150.00 for Court filing fee

7. This Court has authority to order that Rule 4001(a)(3) is not applicable to the order entered in granting this motion, and Movant requests this Court so order;

WHEREFORE, FIFTH THIRD MORTGAGE COMPANY prays this Court enter an Order pursuant to 11 U.S.C. §362(d) modifying the automatic stay as to Movant, allowing the fees and costs described herein to be added to the indebtedness pursuant to the terms of the note and mortgage, and for such other and further relief as this Court may deem just and proper.

Dated this November 17, 2008.

Respectfully Submitted,

Codilis & Associates, P.C.

By: /s/ Joel P. Fonferko

Berton J. Maley ARDC#6209399

Gloria C. Tsotsos ARDC# 6274279

Jose G. Moreno ARDC#6229900

Rachael A. Stokas ARDC#6276349

Peter C. Bastianen ARDC#6244346

Joel P. Fonferko ARDC#6276490

Codilis & Associates, P.C.

15W030 North Frontage Road, Suite 100

Burr Ridge, IL 60527

(630) 794-5300

C&A FILE (14-08-07162)

NOTE: Pursuant to the Fair Debt Collection Practices Act you are advised that this law firm is deemed to be a debt collector attempting to collect a debt and any information obtained will be used for that purpose.